

tario and Quebec, the exact legal situation is not very clear; and in so far as it is settled, it is probably not just what might reasonably be expected—the decisions of lower Courts are conflicting; of Appeal Courts are lacking in detail.

The theory of annulment is that marriage although accompanied by religious observances is for judicial purposes a contract, and can like other contracts be questioned as to its validity. Anson gives as the elements of a valid contract: 1. Offer and acceptance. 2. Form and consideration; 3. Capacity. 4. Genuine consent. 5. Legality of object.

In connection with the contract of marriage these may be regrouped and enlarged as follows:

1. Genuine consent—error—as to person, as to ceremony; duress; undue influence.

2. Form—as laid down by provincial legislation in regard to solemnisation.

3. Capacity—infants; lunatics; intoxicated persons; impotent persons.

4. Legality of object—consanguinity; bigamy.

A sub-division into void and voidable has been attempted by some writers, but such a classification would, besides being confusing on account of different legislation in the various Provinces, appear to be unnecessary, since in practice whether void or voidable, the effect never comes into operation until the validity has been attacked and settled.

1. Consent. Error in regard to the person must be as to identity and not as to condition, either social or physical. Misrepresentation, even though fraudulent, unless it results in such an error is not a ground for a declaration of nullity. The Quebec Civil Code differs from the English Common Law on this subject in that the former provides that after 6 months cohabitation and after having acquired full liberty or become aware of the error, the person coerced or in error cannot have the marriage annulled. (arts. 148-9).

2. Form. Obviously parties are not married unless they comply with the provincial law in regard to solemnisation. This phase of the question has been of much more importance in Quebec than in the other Provinces. A Papal decree, known as the *Ne Temere*, in 1908, tried to make marriages of two Roman Catholics or of one Protestant and one Roman Catholic except by a priest invalid. It was held by a majority of the Judges of the Supreme Court of Canada to be a question of conscience